

**STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENT IMPROVEMENT BOARD**

**PROPOSED REVISIONS TO THE LIQUID WASTE  
DISPOSAL AND TREATMENT FEE REGULATIONS**

**20.7.11 NMAC (FEES)**

**No. EIB 11-08 (R)**

**LINK SUMMERS PRO SE NOTICE OF INTENT  
TO PRESENT TECHNICAL TESTIMONY  
AND PREPARED DIRECT TESTIMONY AND EXHIBITS**

Link Summers, Pro Se, submits to the New Mexico Environment Improvement Board (Board) this Notice to Present Technical Testimony and Prepared Direct Testimony at the hearing before the Board, to be held August 1, 2011, and continuing thereafter as necessary, to consider proposed revisions by Link Summers, Pro Se Petitioner, to the Liquid Waste Disposal and Treatment Fee Regulations, 20.7.11 NMAC and related sections. The technical testimony and direct testimony and exhibits submitted by Link Summers will support the proposed revisions. In addition, Gene Bassett will provide technical testimony and direct testimony and exhibits in support of the proposed revisions.

Pursuant to 20.1.1 NMAC, Link Summers provides to the Board the following information, in narrative form:

My curriculum vitae and statement of Qualifications is attached to this document and is labeled "LS Exhibit 1".

I have been involved in every aspect of the on site wastewater industry as a manufacturer, a site evaluator, a system designer, an installer, a maintenance service provider, licensed contractor, electrician, plumber and certified wastewater operator. I hold several patents for products directly related to the on site wastewater industry. In addition, I possess special expertise with regard to 20.7.11 NMAC by virtue of my educational and lobbying background prior to and during the time the fee regulation was put into place.

I have been a registered lobbyist in the State of New Mexico for approximately 20 years. I was approached by the office of Governor Gary Johnson to help lobby the change in the New Mexico statutes which resulted in the transfer of the liquid waste program from the New Mexico Construction Industries Division of the Regulation and Licensing Division to the Environment Improvement Board and the New Mexico Environment Department. Governor Johnson's office authored the bill and then - representative, now - Attorney General Gary King sponsored the bill. There were discussions concerning education,

training, licensing and certification during the course of the debate on the bill. The bill passed and was signed into law.

Governor Johnson appointed me and Gene Bassett, and a wide variety of individuals representing regulators from Santa Fe County, CID, NMED, the engineering community, the realtors and the homebuilders to a committee to rewrite the Liquid Waste Disposal and Treatment Regulations, 20.7.3 NMAC. In a departure from past practice by CID, Governor Johnson's office insisted that there be no fee charged for liquid waste permits

In 1999 Governor Johnson's office changed its mind about fees and requested that the New Mexico Legislature authorize the Environment Improvement Board to levy fees for different types of permits issued in conjunction with the liquid waste program. The 1999 New Mexico Legislature passed the authorization over the strong objections of the New Mexico Home Builders. The following year, Senator Lee Rawson, the brother of the president of the New Mexico Home Builder's Association, introduced legislation to repeal the liquid waste fee authorization. Jack Milarch and other lobbyists for the Homebuilder's Association vigorously attempted to help pass the repeal. Secretary of the Environment Pete Maggiore asked me and Gene Bassett to help defeat the bill. Gene and I kept our end of the deal and the bill was defeated.

Subsequently, in 2001, the Environment Improvement Board held a hearing to adopt the fee regulation. The proposed fee was estimated to bring in estimated to bring in approximately \$ 700,000 to \$ 800,000 per year. NMED justified the implementation of the fee as being used to hire 5 new liquid waste specialists, a trainer, and an account manager. They also said the fee amount was necessary to provide education to both staff and the industry. Gene Bassett, Mike Addy and I attended those hearings and testified. I have attached excerpts from the official transcript of those hearings as "Exhibit LS 2". Specifically Steve Walker, the program manager for the liquid waste program, testified on page 31, under oath, that "In 1999, the Department determined that enhancements to the program were needed to meet the current and expected future needs in the area of permitting, inspection, certification and training of staff and liquid waste installers." (emphasis added) Mr. Walker continued "The Department further decided that it would pursue the use of liquid waste fees to finance these enhancements." The money from this fee was to be placed in the Liquid Waste Fund and was to be paid directly to the liquid waste program with no legislative oversight. Representative Max Coll and other members of the House Appropriations Committee, including Representative Rhonda King, strongly objected to this lack of oversight and provided amendments placing requirements on the authorization of the fee. One such requirement was to include periodic reporting to the Environment Improvement Board. The fee regulation was passed with those opposing the fee relying on the representations of NMED which included the commitment to very limited uses of the fund for the liquid waste program only and to report to the EIB every six months.

When the Johnson administration ended and the Richardson administration began, I served on The Richardson transition team as the chairman of the subcommittee on the Field Operations Division which included the liquid waste program.

One of the issues that immediately came to my attention, as the chair of the subcommittee of the transition team, was the fact that NMED had been given a significant amount of money from EPA for the "Source Water Assessment" study of community water systems for the drinking water program. I was told that the money had been spent, but not on the study. I was also offered the opinion by a member of upper management at the Field Operations Division of NMED that "someone was going to jail" for misappropriating the funds.

After that Anna Marie Ortiz, an attorney with no prior management experience, was transferred within the Department to become the Head of the Field Operations Division. She was hired, not as an attorney but as a manager, to oversee the Field Operations Division that included both the Drinking Water Bureau as well as the Liquid Waste Program. She boasted to me that she had met with EPA and worked out a deal with them to make the Source Water Assessment problem go away. Shortly thereafter there were allegations that money was being taken from the Liquid Waste fund to pay for the study owed to EPA. When I asked her about it she refused to answer but wanted to know where I had heard it

After a time Gene Bassett and I asked repeatedly about where the promised education program was and were repeatedly put off. We were led to believe that money was accumulating in the fund and now amounted to millions of dollars. We also noticed that NMED was not reporting to the EIB as they had promised. Gene and I spent over 2 hours with Michelle Aubel of the Legislative Finance Committee who confirmed there was no money left in the fund. She also confirmed that she had recently written a check to NMED for over \$ 700,000 with no questions asked or accounting for the money being offered.

Thoroughly disgusted, Gene and I demanded of Anna Marie Ortiz and Dennis McQuillan that they account for the money. They refused. I sent an Inspection of Public Records Act Request to the EIB for a copy of the reports (LS Exhibit 3) and received the attached reply (LS Exhibit 3 A). I then sent a demand letter and was stonewalled. (LS Exhibit 4) Meanwhile I went to the Legislature and found two sponsors for a bill to re write the Fee Statute. (LS Exhibit 5)

At this time Anna Marie Ortiz and Dennis McQuillan enlisted the services of the New Mexico Homebuilder's Association and their lobbyists to help NMED defeat the bills, in violation of the Lobbyists Registration Act. They were successful in defeating the fee bill as well as my bill to provide assistance to low income New Mexicans to replace their cesspools. At one point Anna Marie Ortiz, Dennis McQuillan, and Jim Perry (all NMED state employees) met with me, Gene Bassett and Ralph Baker Dotson at the State Capitol building to ask that I withdraw the amended fee bill in return for their not opposing the cesspool elimination bill. We refused and walked out. I was

also told by Don Becker and others that the New Mexico Home Builder's Association was opposing my bill. I was told and later provided proof that Becker and the HomeBuilder's were involved in an illegal "pay for play" scheme. In return for their successful lobbying against my bills, Becker received "special privileges". (LS Exhibit 6). I had given the whole special privileges evidence, including the Robert Caswell Investigations report to the FBI. I also contacted the New Mexico Secretary of State's office to file a complaint for violation of the Lobbyists Registration Act (a fourth degree felony) against Ortiz, McQuillan, Perry, and the lobbyists for the HomeBuilder's Association. (LS Exhibit 7)

The Secretary of State investigated and confirmed my accusations - they then turned the complaint over to the Attorney General who assigned it to Assistant Attorney General Bill Moon for action.

As a result of my persistence with the Environment Improvement Board, NMED finally signed an agreement with me to provide a detailed "report" to EIB on the schedule provided in 20.7.3.14 NMAC. (LS Exhibit 8). The report makes it clear that money from the Liquid Waste Fund was not being used for the purposes promised by NMED to induce the EIB and the industry to support the fee in the first place.

I also set in motion a Request for Hearing on 20.7.11 NMAC. I mistakenly thought that we had made it clear to NMED that we were serious and, unlike those who had gone before us, that we were dedicated to ending the corrupt practices within NMED. We thought they would abandon their ways. We were wrong. Instead, emboldened by the culture of corruption that was the Richardson Administration, they flagrantly published their report showing superior performance by the Liquid Waste Program and touting their "unqualified" audit as evidence of proper accounting. (LS Exhibit 9) They hired Roberta Vigil, daughter of convicted State Auditor Robert Vigil and niece of state Representative Vigil to oversee the accounting for the liquid Waste fee program. Ordinarily I wouldn't bring this up except for the fact that I knew that there was money missing in the Farmington office concerning contractors who were given "special privileges" also not paying for permits. Not surprisingly, their reports to the EIB and to state and federal government officials, showed everything in order, even though they knew that there were serious allegations of permits being issued without the appropriate fees being collected. At the back of the report they reported that, instead of the liquid waste fund being used to pay for 5 liquid waste specialists, one trainer and one accountant, the fund was now being used to pay the salary of Dennis McQuillan, whose combined salary and retirement from conducting studies for the Ground Water Bureau totals more than the Secretary of the Environment now receives. In addition, the liquid Waste Fund is used to pay Tom Brandt, the staff engineer whose job description includes the duty to inspect the manufacturer's of concrete septic tanks - which he has failed to do. (LS Exhibit 10 & 11). The salaries of an attorney, a compliance officer and other unnecessary personnel were also taken from the Liquid Waste Fund - but no education.

Although NMED easily acquired data from contiguous states for their presentation to the EIB to acquire the money from the fees and to provide the report to the EIB (LS Exhibit

8), their lawyer now spends more taxpayer money briefing the reasons it can't be done, practically and legally.

For comparison purposes the proposed changes recognize that programs in contiguous states may require the equivalent of our "liquid waste specialists" to be registered sanitarians. The quality of their inspections on unpermitted systems could hardly be worse than those performed by District 1 liquid waste specialist Steve Walker (LS Exhibit 13) who has been with the Department for almost 30 years and, at one time, was the liquid waste program manager. In addition, there is evidence that David Torres, the liquid waste specialist in Farmington helped falsify permits.(LS Exhibit 14)

I am recommending the following:

1. Limit the use of funds from the Liquid Waste Fund to the 5 liquid waste specialists whose function is restricted to the liquid waste program only.
2. Hire one trainer for training the 5 liquid waste specialists. A diligent effort should be made to hire someone who has both several years of construction inspection experience and several years of educational and practical experience in wastewater operations and maintenance.
3. Hire a qualified accountant with auditing experience or contract with an outside accounting firm with auditing experience to oversee the receipts from the field offices.
4. Establish a reasonable budgeted amount for staff, industry, and public education
5. Retain a 15% (of the items listed above) reserve.
6. Set the fee based upon items 1 - 5.

I believe that the proposed changes to 20.7.11 NMAC, with the diligent oversight of the EIB, can help assure that the public is not overcharged, that NMED obeys the statute (74-1-15 NMSA) that created the liquid waste fee and implements the program as it was originally intended and promised

Respectfully submitted

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